

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Charmar Water Company)	11-0561
Proposed General Increase in Water Rates)	
)	
Cherry Hill Water Company)	11-0562
Proposed General Increase in Water Rates)	
)	
Clarendon Water Company)	11-0563
Proposed General Increase in Water Rates)	
)	
Killarney Water Company)	11-0564
Proposed General Increase in Water Rates)	
)	
Ferson Creek Utilities Company)	11-0565
Proposed General Increase in Water And)	
Sewer Rates)	
)	
Harbor Ridge Utilities, Inc.)	11-0566 On Rehearing
Proposed General Increase in Water And)	
Sewer Rates)	(Cons.)

**REPLY BRIEF ON REHEARING OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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October 23, 2012

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief on Rehearing in the instant proceeding.

I. BACKGROUND

The parties filed Initial Briefs on Rehearing (“IB on Rehearing”) on October 16, 2012. This Reply Brief on Rehearing follows.

Having reviewed the briefs of the various parties, which were filed with the Commission on October 16, 2012, Staff concludes that few substantive issues or arguments were introduced that Staff did not adequately address already in its own Initial Brief on Rehearing. Therefore, this Reply is brief. Failure to specifically address specific arguments made in the IBs on Rehearing of the various parties should not be construed as acceptance of those arguments or positions.

II. ARGUMENT

A. The Commission Clearly Found The Record Insufficient

The Companies fail to discuss the Staff direct testimony on rehearing that concludes the Companies have provided insufficient additional evidence for the Commission to consider. (Staff IB on Rehearing, p. 5) Rather, the Companies continue to refer to the Staff recommendation in the initial phase of this case to include in rates recovery nearly all of the now contested internal WSC labor costs in rate case expense. (Companies IB on Rehearing, p. 6) As Staff testified however, the Commission's Order made clear it was not satisfied with the record in the initial phase, and the Companies provided nothing to satisfy the Commission's concerns. (Staff IB on Rehearing, p. 5) Further, the Companies inappropriately refer not only to Commission Staff participating in the current cases, but also the "recently completed cases of eight affiliates" and therefore state that Staff "would be fully aware of the nature and extent of the services provided by WSC personnel." (Companies IB on Rehearing, p. 6) The Companies' reliance on Staff's review of the Companies' affiliates' costs in another proceeding fails on the grounds that not only is that review not in evidence in this proceeding, it was not the same Staff personnel who conducted the review, and the review was conducted

prior to the Commission Order in Docket No. 11-0561 Cons. wherein the Commission expressed dissatisfaction with the record evidence provided in this Docket. (Staff IB on Rehearing, pp. 4-6)

The Companies also discuss the ongoing rulemaking for rate case expenses, Docket No. 11-0711, and opine that “Staff’s proposal [in that proceeding] would require the utility to provide essentially the same documentation that the Companies have already provided in this proceeding.” (Companies IB on Rehearing, p. 4) First, Staff notes that this rulemaking is in its primary stages. There is not even a First Notice Order, nor have formal comments been provided, so it is premature to speculate what a future rule “would require.” Second, Staff disagrees with the Companies’ characterization of its proposal. Staff’s proposal for services provided by employees of the utility or any of its affiliates includes a requirement for documentation of the time spent providing the service(s) on a daily basis. (Staff Proposed Draft Rule on Rate Case Expenses, Docket No. 11-0711, Sept. 19, 2012, p. 3) The Companies in this Docket have not provided information as detailed in the Commission’s Order, and further state they cannot provide such documentation because it does not exist. (Companies IB on Rehearing, p. 2)

B. The Illinois-American Case Supports Staff’s Position

The Companies attempt to make a distinction between attorney fees and non-attorney utility employees. (Companies IB on Re-hearing, p. 9) (“The Illinois-American case cannot be construed to hold that the distinctive factors to be considered for approval of attorney fees apply to non-attorney utility employees.”) However, the Companies ignores Section 9-229. In doing so, the Companies draw the wrong

distinction from the Illinois-American case. In fact, the Illinois-American case that UI cites for support, makes a distinction between general findings¹ and the more specific findings required under Section 9-229. Section 9-229 provides that:

Consideration of attorney and expert compensation as an expense. The Commission shall specifically assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys *or technical experts to prepare* and litigate a general rate case filing. This issue shall be expressly addressed in the Commission's final order.

220 ILCS 5/9-229 (emphasis added).

Section 9-229 clearly requires a specific finding of any amount paid by UI to *any technical experts* to prepare a rate case filing. In this regard, the court explained that

In considering section 9-229, we note that prior to its enactment, the Commission, pursuant to section 10-201(e)(iii), only needed to make sufficient findings to allow for informed judicial review. Section 9-229 created a requirement for more specific findings. Under section 9-229, the Commission is required to "specifically assess the justness and reasonableness" of "*any amount*" paid by the utility *for legal and expert fees* and the Commission must "expressly address" this issue in its order. 220 ILCS 5/9-229 (West 2010). We construe this statutory language to require the Commission to "expressly address" the basis for its findings. Section 9- 229 mandates a more detailed finding than what is generally required of the Commission, otherwise the purpose of the legislative action to enact it was unnecessary.

Id., ¶ 47 (emphasis added).

As is clear from the court's language above, it simply does not matter whether salary expenses for non-attorney utility employees are legal fees or fees paid to technical experts. If the Company seeks to recover salary expenses for non-attorney utility employees as rate case expense under Section 9-229, the Commission must make the same specific findings, regardless of the character of the expense constituting rate case expense. Non-attorney utility employees are technical experts. In fact, the

¹ *People Ex Rel Madigan v. ICC* ("Illinois-American"), 2011 IL App (1st) 101776, ¶ 39 (which only require findings "sufficient to allow an informed judicial review.").

court ordered the above referenced case remanded “to the Commission for additional findings on the issue of legal *and expert fees* as required under section 9-229 of the Public Utilities Act.” *Id.*, ¶ 50 (emphasis added). In this rehearing phase, as explained in detail in Staff’s IB on Rehearing, the Companies have not complied with the Order in this docket, which required the Companies provide “with sufficient detail regarding what actual expenses were incurred, by whom, for what purpose, and why such expenses were necessary.” (Order, Docket No. 11-0561c., May 22, 2012, p. 19) Because the Companies’ internal rate case expense documentation was and is still insufficient as required by Section 9-229 and described in both the Commission’s Order in this docket as well as the established law in Illinois, Staff recommends the Commission make no adjustments to the revenue requirement previously approved in this docket.

III. CONCLUSION

For the reasons set forth *supra*, Staff respectfully requests that the Commission’s Final Order on Rehearing in the instant proceeding reflect Staff’s recommendations described herein.

Respectfully submitted,

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